

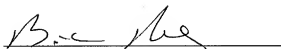
**DECLARATION OF BRIAN KUNZLER UNDER 37 CFR 1.131  
ANTEDATING A PRIOR ART REFERENCE**

I, Brian Kunzler, acknowledge that any willful false statements made herein are punishable by fine or imprisonment or both and they jeopardize the validity of the application or any patent issuing thereon. All statements made herein are made of my own knowledge and are true and all statements made on information and belief are believed to be true. I hereby declare that my law firm prepared and filed U.S. Patent Application Serial No. 10/686,878 entitled APPARATUS SYSTEM AND METHOD FOR DETERMINISTICALLY TRANSFERRING DATA BY REBOOTING TO A DATA TRANSFER KERNEL, which was filed on October 16, 2003. I have recently become aware of a prior art reference which has been cited against that patent application. The reference is U.S. Patent 7,231,547 issued to Moiroux et al. (referred to herein as "Moiroux") for DATA PROCESSING SYSTEM AND METHOD FOR DATA TRANSFER TO A NON-VOLATILE MEMORY IN CASE OF A POWER FAILURE filed on **April 29, 2003**.

I declare that the subject matter contained in U.S. Patent Application 10/686,878 was invented prior to **April 29, 2003** and reasonable diligence was exercised in reducing the invention to constructive practice. As evidence thereof, am submitting Exhibit A which is an IBM disclosure document entitled "Disclosure TUC8-2002-0172," Exhibit B, which is a presentation dated **August 6, 2002** that describes the detail of the invention entitled "Main Idea for Disclosure TUC8-2002-0172," Exhibit C which is an engagement letter dated **April 16, 2003** from IBM Attorney Dale Crockatt to myself authorizing preparation of the patent application, and Exhibit D which is a sequence of emails dated **July 10, 2003** between patent practitioners Scott Thorpe and Steve McDaniel indicating completion of a draft of the patent application.

I declare that a letter requesting preparation of a patent application was sent to me on **April 16, 2003** by IBM Attorney Dale Crockatt. See Exhibit C. Scott Thorpe and Steve McDaniel were assigned by myself to prepare a draft of the patent application and a draft of the patent application was sent by Scott Thorpe to Vincent Hsu on or after **July 10, 2003**. See Exhibit D. I also declare that one or more revisions were made to the application and reviewed by myself and/or my staff and the inventors listed in the application, that signature documents were prepared and sent to the inventors for signing, that the signature documents were subsequently received by my office, and that the final revision of the application was filed on **October 16, 2003**. I declare that reasonable diligence was used throughout this process.

Dated this 3 day of February, 2009

A handwritten signature in dark ink, appearing to read "Brian Kunzler", is written over a horizontal line.

Brian Kunzler